

ADJUDICATION OF PRIVATE CLAIMS.

JANUARY 28, 1916.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. BYRNES, of South Carolina, from the Committee on War Claims, submitted the following

REPORT.

[To accompany H. R. 6918.]

The Committee on War Claims, to whom was referred the bill (H. R. 6918) to relieve Congress from the adjudication of private claims against the Government, submit the following report:

This bill, as indicated by its title, has for its purpose the relief of Congress from the adjudication of private war claims.

The practice in paying these claims in the past has been to refer the claim to the Court of Claims, which meant merely that the claimant had conferred on him the privilege of presenting his claim to the court for a judicial determination of the facts, the facts when found by the court to be transmitted to Congress.

The Court of Claims has had jurisdiction to make findings of this nature since 1883. By the Bowman Act, approved March 3, 1883 (22 Stat. L., 485), it was provided that any committee of either House of Congress having pending before it any claim which was not barred from consideration by any law of the United States might refer such claim to the Court of Claims for judicial ascertainment of all material facts.

By section 14 of the Tucker Act, approved March 3, 1887 (24 Stat. L., 505), it was provided that when a bill was pending in either House of Congress that House might refer the same to the Court of Claims, the court to report the facts of the claim and the amount to the House by which the bill was referred.

The jurisdiction of the Court of Claims under the Tucker Act was much broader than under the Bowman Act, as under the Tucker Act any bill providing for payment of a claim, except a pension, might be referred to the court. The Tucker Act therefore operated to open the doors of that court to many claims of which no jurisdiction could be taken by the court under the Bowman Act, such, for instance, as claims for rent of real estate at seat of war; for supplies taken from the possession of heirs of an undivided estate, even though there was an administrator whose loyalty could not be established; and claims

of classes which might have been previously presented to the Southern Claims Commission or Quartermaster General, and which had become barred from failure to present them.

—By the Judicial Code (Mar. 3, 1911) the Bowman and Tucker Acts were repealed and section 151 of that code was substituted for the previous acts, the section being practically a reenactment of section 14 of the Tucker Act, with the amendment made thereto by act of June 25, 1910.

The above-mentioned laws under which the Court of Claims has had jurisdiction to make findings in war claims are, for the convenience of the House, here set out in full:

THE BOWMAN ACT.

[22 Stat. L., p. 485.]

AN ACT To afford assistance and relief to Congress and the executive departments in the investigation of claims and demands against the Government.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever a claim or matter is pending before any committee of the Senate or House of Representatives, or before either House of Congress, which involves the investigation and determination of facts, the committee or House may cause the same, with the vouchers, papers, proofs, and documents pertaining thereto, to be transmitted to the Court of Claims of the United States, and the same shall there be proceeded in under such rules as the court may adopt. When the facts shall have been found, the court shall not enter judgment thereon, but shall report the same to the committee or to the House by which the case was transmitted for its consideration.

SEC. 2. That when a claim or matter is pending in any of the executive departments which may involve controverted questions of fact or law, the head of such department may transmit the same, with the vouchers, papers, proofs, and documents pertaining thereto, to said court, and the same shall be there proceeded in under such rules as the court may adopt. When the facts and conclusions of law shall have been found, the court shall not enter judgment thereon, but shall report its findings and opinions to the department by which it was transmitted for its guidance and action.

SEC. 3. The jurisdiction of said court shall not extend to or include any claim against the United States growing out of the destruction or damage to property by the Army or Navy during the War for the Suppression of the Rebellion, or for the use and occupation of real estate by any part of the military or naval forces of the United States in the operation of said forces during the said war at the seat of war; nor shall the said court have jurisdiction of any claim against the United States which is now barred by virtue of the provisions of any law of the United States.

SEC. 4. In any case of a claim for supplies or stores taken by or furnished to any part of military or naval forces of the United States for their use during the late War for the Suppression of the Rebellion, the petition shall aver that the person who furnished such supplies or stores, or from whom such supplies or stores were taken, did not give any aid or comfort to said rebellion, but was throughout that war loyal to the Government of United States, and the fact of such loyalty shall be a jurisdictional fact; and unless the said court shall, on a preliminary inquiry, find that the person who furnished such supplies or stores, or from whom the same were taken as aforesaid, was loyal to the Government of the United States throughout said war, the court shall not have jurisdiction of such cause, and the same shall, without further proceedings, be dismissed.

SEC. 5. That the Attorney General, or his assistants, under his direction, shall appear for the defense and protection of the interests of the United States in all cases which may be transmitted to the Court of Claims under this act, with the same power to interpose counterclaims, offsets, defenses for fraud practiced or attempted to be practiced by claimants, and other defenses, in like manner as he is now required to defend the United States in said court.

SEC. 6. That in the trial of such cases no person shall be excluded as a witness because he or she is a party to or interested in the same.

SEC. 7. That reports of the Court of Claims to Congress under this act, if not finally acted upon during the session at which they are reported, shall be continued from session to session and from Congress to Congress until the same shall be finally acted upon.

Approved, March 3, 1883.

THE TUCKER ACT.

[24 Stat. L., p. 505.]

AN ACT To provide for the bringing of suits against the Government of the United States.

(This is an act providing for the prosecution of general jurisdiction cases, except section 14, which relates to congressional cases, and is as follows:)

SEC. 14. That whenever any bill, except for a pension, shall be pending in either House of Congress providing for the payment of a claim against the United States, legal or equitable, or for a grant, gift, or bounty to any person, the House in which such bill is pending may refer the same to the Court of Claims, who shall proceed with the same in accordance with the provisions of the act approved March third, eighteen hundred and eighty-three, entitled "An act to afford assistance and relief to Congress and the executive departments in the investigation of claims and demands against the Government," and report to such House the facts in the case and the amount, where the same can be liquidated, including any facts bearing upon the question whether there has been delay or laches in presenting such claim or applying for such grant, gift, or bounty, and any facts bearing upon the question whether the bar of any statute of limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy.

Approved, March 3, 1887.

ACT OF JUNE 25, 1910.

[36 Stats., 837.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section fourteen of the act of March third, eighteen hundred and eighty-seven, entitled "An act to provide for the bringing of suits against the Government of the United States," be, and the same is hereby, amended by adding at the end thereof the words "together with such conclusions as shall be sufficient to inform Congress of the nature and character of the demand, either as a claim, legal or equitable, or as a gratuity, against the United States," so that when amended it shall read as follows:

"SEC. 14. That whenever any bill, except for a pension, shall be pending in either House of Congress providing for the payment of a claim against the United States, legal or equitable, or for a grant, gift, or bounty to any person, the House in which such bill is pending may refer the same to the Court of Claims, who shall proceed with the same in accordance with the provisions of the act approved March third, eighteen hundred and eighty-three, entitled 'An act to afford assistance and relief to Congress and the executive departments in the investigation of claims and demands against the Government,' and report to such House the facts in the case and the amount, where the same can be liquidated, including any facts bearing upon the question whether there has been delay or laches in presenting such claim, or applying for such grant, gift, or bounty, and any facts bearing upon the question whether the bar of any statute of limitation should be removed, or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy, together with such conclusions as shall be sufficient to inform Congress of the nature and character of the demand, either as a claim, legal or equitable, or as a gratuity, against the United States and the amount, if any, legally or equitably due from the United States to the claimant."

It will be noted that the following section of the Judicial Code is practically identical with the above-quoted section 14 of the Tucker Act, as amended June 25, 1910, with an added proviso:

SECTION 151 OF THE JUDICIAL CODE.

[36 Stats., 1138.]

SEC. 151. Whenever any bill, except for a pension, is pending in either House of Congress providing for the payment of a claim against the United States, legal or equitable, or for a grant, gift, or bounty to any person, the House in which such bill is pending may, for the investigation and determination of facts, refer the same to the Court of Claims, which shall proceed with the same in accordance with such rules as it may adopt, and report to such House the facts in the case and the amount, where the same can be liquidated, including any facts bearing upon the question

whether there has been delay or laches in presenting such claim or applying for such grant, gift, or bounty, and any facts bearing upon the question whether the bar of any statute of limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy, together with such conclusions as shall be sufficient to inform Congress of the nature and character of the demand, either as a claim, legal or equitable, or as a gratuity against the United States, and the amount, if any, legal or equitably due from the United States to the claimant: *Provided, however,* That if it shall appear to the satisfaction of the court upon the facts established that, under existing laws or the provisions of this chapter, the subject matter of the bill is such that it has jurisdiction to render judgment or decree thereon, it shall proceed to do so, giving to either party such further opportunity for hearing as in its judgment justice shall require, and it shall report its proceedings therein to the House of Congress by which the same was referred to said court.

Under these acts the jurisdiction of the Court of Claims was merely to investigate the claims and report the facts to Congress. The court did not have jurisdiction to render judgment against the United States and it was necessary for Congress, usually by an omnibus bill, to make appropriations for the claims.

Thus Congress had to act on every claim twice, once to determine that the nature of the claim was one which, if the allegations of the claimant were correct, should be paid, and refer the claim to the Court of Claims, and then it was necessary to make an appropriation for the payment of the amount found due by the court.

This was a useless waste of the time of Congress and frequently worked a great hardship on claimants, the payment of whose claims was delayed by the fact that Congress had no time to consider private claims. Also payment was frequently delayed by reason of the fact that the Senate, which does not have a separate Committee on War Claims, would add amendments which were not war claims to an omnibus bill which passed the House as a war-claims bill. The House conferees would be members of the War Claims Committee, who were not in a position to pass on the claims that were not war claims, which would result in the bill failing to get out of conference.

An example of the delay in paying claims which had been passed on by the Court of Claims is seen in the fact that no war claims were paid between the bill of February 24, 1905 (33 Stat. L., 743), and the bill of March 4, 1915 (38 Stat. L., 962), a period of 10 years.

Many claimants presented just claims and, after they were referred to the Court of Claims, went to the expense of prosecuting them in that court, and successfully prosecuted them, and yet were forced to wait 10 years for the payment of the claim after the matter was adjudicated by the court.

If this bill becomes a law Congress will only pass on each claim once. It will investigate the claim, and if it is found to be such a claim as should be paid if the allegations are true, it will be referred to the Court of Claims, which will have power to render judgment against the United States, which judgment will be paid in a regular appropriation bill.

It will be noticed that the facts, which must be proven before the court can render judgment, are carefully set out in the bill. These are the limits which Congress has always placed upon the payment of war claims, and claims in which judgment can be rendered under the terms of this bill are just such claims as Congress has always appropriated for.

In adjudicating claims under this bill the Court of Claims will, of course, follow the rules which it has always followed. Witnesses are examined as in chancery practice. Depositions are taken in behalf of the claimant, and his witnesses subjected to cross-examination by counsel representing the United States, detailed in most instances from the Department of Justice. Attorneys in the service of the Department of Justice also make independent investigations of claims, and if any facts are found unfavorable to the claim witnesses are called for the Government and examined in the same manner as witnesses for the claimant.

After the taking of testimony, briefs are prepared by counsel for the claimant and also by counsel for the United States. Many cases are argued orally before the court. An active defense is made in every case by counsel representing the Government, so that the proof of a claim in the Court of Claims is no mere formal matter.

In brief, it may be stated that every case tried by the court pursues about the same course as does an ordinary case in courts of civil jurisdiction, save that here the court, consisting of five judges appointed by the President, acts as a jury and determines the facts. All testimony is taken under cross-examination. It often happens that owing to the fact that witnesses are widely scattered, testimony is taken on one case in several different places or States, the attendance of counsel both for the United States and for the claimant being a necessary incident to the taking of depositions.

The interests of the Government are further safeguarded by the fact that no counsel for the Government is permitted to admit any material fact against the interest of the Government: every material fact upon which claimant relies must be proven.

It is, of course, impossible to accurately estimate the amount which will be necessary to pay the judgments of the Court of Claims under this bill. Your committee, however, does not think the amount will be as large as one would suppose from the scope of the bill.

As stated above, Congress has always paid claims which had been passed upon by the Court of Claims which were of the nature that will be paid under this bill. The total appropriation for the payment of these claims since the Court of Claims has had jurisdiction of war claims is given below.

The first general appropriation for payment of findings of the Court of Claims was made in the Fifty-first Congress. Prior to that time various individual appropriations had been made for payment of Bowman Act findings aggregating \$128,138.73.

The total of appropriations heretofore made to pay claims allowed by the Court of Claims is as follows:

Prior to Fifty-first Congress.....	\$128, 138. 73
Fifty-first Congress (Mar. 3, 1891; 26 Stat. L., 1445).....	573, 763. 30
Fifty-fifth Congress (Mar. 3, 1899; 30 Stat. L., 1161).....	1, 722, 655. 79
Fifty-seventh Congress (May 27, 1902; 32 Stat. L., 207).....	444, 503. 10
Fifty-eighth Congress (Feb. 24, 1905; 33 Stat. L., 743).....	1, 197, 272. 60
Sixtieth Congress (individual act).....	3, 390. 00
Sixty-third Congress (Mar. 4, 1915; 38 Stat. L., 962).....	1, 866, 555. 04
Total.....	5, 936, 278. 56

It is seen therefore that in the 32 years that the Court of Claims has had jurisdiction to make findings in war claims, during which time most of the claims that could be easily established were pre-

sented, only \$5,936,278.56 has been appropriated for the payment of these claims.

In the natural course of events the proportion of claims upon which the court will find favorably to the claimant is less at this time than in the past, owing to the lapse of time and the impossibility of adducing the amount and character of proof demanded by the court.

Section 5 of the act approved March 4, 1915, which would be repealed by the provisions of the amendment suggested by the committee, is what is known as the "Crawford amendment" to the omnibus war claims bill passed at the last session of Congress.

It is but fair to state the circumstances surrounding the adoption of this amendment. The bill was considered in the Senate the afternoon preceding the day on which Congress adjourned and was not reported to the House until quite late that night, and therefore did not receive at the hands of the committee the careful consideration it would have received at any time other than the closing hours of the session. It is fair also to say that there was no debate by the House. It was the opinion of this committee after a casual consideration that the amendment would take from the court jurisdiction to hear and determine all cases referred to the court after the passage of the amendment, but would not affect cases then pending before it. The Court of Claims, however, construed the amendment as depriving it of jurisdiction over cases then pending, and thereupon dismissed a great number of cases, in many of which testimony had been taken and the rights of the claimants argued.

Inasmuch as under the terms of this bill Congress will have for two years the right to refer claims to that court, we believe it is only fair to restore to the Court of Claims jurisdiction over the cases pending at the time of the adoption of the Crawford amendment, and this it is sought to do by the amendment suggested by the committee.

The section placing a limitation upon the jurisdiction of the court is amended so as to leave no doubt that it is the intention of Congress that after the expiration of two years from the date of the passage of this act the Court of Claims shall have no jurisdiction of any claim growing out of the Civil War, whether such claim be referred to it under the Bowman or Tucker Act or section 151 of the Judicial Code. It is the opinion of the committee that within that time every person who has a legitimate claim against the Government growing out of the Civil War will have opportunity to present it to the Court of Claims, and that at the expiration of that time Congress will be relieved and the courts be relieved of the consideration of war claims.

Your committee submit the following amendments:

After the enacting clause insert the following:

"That section five of the act approved March fourth, nineteen hundred and fifteen, entitled 'An act making appropriation for the payment of certain claims in accordance with findings of the Court of Claims, reported under the provisions of the acts approved March third, eighteen hundred and eighty-three, and March third, eighteen hundred and eighty-seven, and commonly known as the Bowman and the Tucker Acts, and under the provisions of section numbered one hundred and fifty-one of the act approved March third, nineteen hundred and eleven, commonly known as the Judicial Code,' be, and the same is hereby, repealed.

"SEC. 2. That all suits in the Court of Claims which have heretofore been dismissed by the said court by reason of the provisions of section five of the said act shall, on motion of the claimants, be reinstated on the docket of the said court and proceeded with according to law and that all evidence or depositions heretofore taken or submitted in said cases or claims, even though taken after March fourth, nineteen hundred and fifteen, but prior to the dismissal of said cases or claims by said court shall be considered as having been legally taken or submitted, notwithstanding the provisions of said repealed section.

"SEC. 3."

On page 2, in line 4, after the word "military," insert the words "or naval."

On page 2, in line 21, strike out the word "rebellion" and insert in lieu thereof the words "Southern Confederacy."

On page 3, in line 9, strike out the words "Sec. 2" and insert in lieu thereof the words "Sec. 4."

On page 3, strike out lines 16, 17, 18, and 19 and insert in lieu thereof the following:

"SEC. 5. That the Court of Claims shall have no jurisdiction over any claim referred to said court after the expiration of two years from the passage of this act under the provisions of this act or over any claim for the use and occupation of property or for stores and supplies taken, which may be referred to said court after the expiration of the said time under the provisions of section one hundred and fifty-one of the act approved March third, nineteen hundred and eleven, commonly known as the Judicial Code."

On page 3, in line 20, strike out the words "Sec. 4" and insert in lieu thereof the words "Sec. 6."

On page 3, in line 23, after the word "taken," insert the words "or whose property was used and occupied."

On page 3, in line 23, strike out the figures "\$500" and insert in lieu thereof the words "five hundred dollars."

Your committee recommend that the above amendments be adopted and that the bill as amended be passed.



